

ILLINOIS COMMERCE COMMISSION

DATA REQUEST

REQUEST NUMBER JRM 2.00

Requested of Company Representative:

Utility Company: Talk.com Holding Corp d/b/a Network Services of New Hope and also d/b/a The Phone Company ("Talk.com" or "the Company")

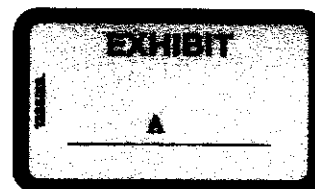
Date Submitted: November 28, 2001

Date Response: December 26, 2001

Reference No.: 00-0732

JRM 2.01 Please provide a complete copy of the Company's most recent financial statements. Please note that the copies previously provided do not contain all of the necessary data for the balance sheet and statement of changes in financial position. Please print the current financial statements in a manner that includes all data reflected in those statements.

Response: Please see **Exhibit 1**. The Exhibit reflects the most recent financial statements incorporated in the Company's Form 10-Q filed November 14, 2001. The Company previously has provided financial statements that are publicly available through the Securities and Exchange Commission ("SEC")'s on-line filing system, Edgar-On-Line. Attached is a non-Edgar version of these statements that may be easier for Staff to read. The consolidated financial statements and related notes thereto as of September 30, 2001 are presented as unaudited statements, yet in the opinion of the management of Talk America, include all adjustments necessary to present fairly the information set forth therein. The Company's outside auditors, PricewaterhouseCoopers, review its financial statements as required by the Securities and Exchange Act and NASDAQ rules.



JRM 2.02 Please provide a calculation of Talk America's maximum contingent liability for payments related to consumer complaints. Please demonstrate how the calculation was made by producing all computations and conclusions. Include all supporting work papers, source documents, and assumptions. Please identify all regulatory or government agencies with whom such payments are being discussed or investigated. Include all activities where there is a reasonable possibility that a claim will be asserted regardless of whether a claim has actually been made.

Response: Talk America objects to this request because it seeks the disclosure of information that is protected by the attorney-client privilege as this information is based upon advice and analysis provided by the general counsel of Talk America.

Talk America also objects to this request on the basis that the request is vague, overly broad and unduly burdensome. To begin with, the terms "relating to consumer complaints" is undefined and overly broad. Consequently, this request is vague and overly broad.

The request is also unduly burdensome as it seeks information not calculated, maintained or recorded by the Company. The Company does not maintain a calculation of maximum contingent liability for payments related to consumer complaints for several reasons.

First, for consumer complaints related to slamming, the Statement of Financial Accounting Standards ("SFAS") No. 5, "Accounting for Contingencies" of the Generally Acceptable Accounting Procedures ("GAAP"), requires that only those contingent liabilities be computed that are reasonably estimable and probable. Due to the variety of state rules and to the recent application of Federal Communication Commission ("FCC") slamming rules, actual determination of liability of consumer complaints at best would be wildly speculative and, accordingly, would violate the standards of GAAP as set forth in SFAS No. 5.

Second, to the extent that the Company is asked to project or to estimate calculation of maximum contingent liabilities for payments related to consumer complaints -- as requested by Staff herein -- SEC regulations preclude the disclosure of material, non-public information on a selected basis.

Third, settlements or other regulatory claims that have met the requirements for accrual on the balance sheet are not required to be separately stated on the balance sheet or notes to the financial statements under GAAP requirements.

Finally, the Company simply cannot foreshadow what consumer complaints will be received in the future. Any responsive statement would be highly speculative and outside of the scope of any reasonable data request.

Talk America further objects to this request on the grounds that the requests are irrelevant and immaterial to the issues in this case, and not likely to lead to the discovery of admissible evidence. The Commission Staff's evaluation of the financial resources of the Company must be made on the financial resources disclosed based on GAAP. The Company is not required to create data that would be inconsistent with its publicly-filed financial statements simply because of Staff's baseless query as to whether there are sufficient reserves relating to pending litigation. Consistent with SFAS No. 5, the Company has disclosed in the notes to the financial statements in its quarterly and annual reports with the SEC that the Company is party to a number of legal actions and regulatory investigations and enforcement proceedings arising in the ordinary course of business. The Company has expressed its belief in these SEC reports that the ultimate outcome of these actions and investigations will not result in a liability that would have a material adverse effect on the Company's financial condition or results of operations. The Company's financial statements are prepared in strict adherence to GAAP and the tenants of SFAS No. 5, audited by PricewaterhouseCoopers (the Company's independent auditors) for the year ended December 31, 2000 and reviewed for each of the last three quarters in 2001. This information fully comports with SEC regulations and GAAP and should be sufficient for the Staff's purposes in this proceeding.

JRM 2.03 Please provide a calculation of the Company's maximum contingent liability related to the investigation of the Tennessee Commission, Docket 01-00216. Please produce all supporting computations, source documents, assumptions and conclusions used in this calculation.

Response Talk America objects to this request for the same reasons set forth in response to JRM 2.02. As noted in response to JRM 2.02, SFAS No. 5 requires computation of contingent liability only for those events that are reasonably estimable and probable. In the case of the investigation of the Tennessee Commission in Docket 01-00216, as of the date of this response, the Company has not yet filed its response to the initial show cause order. Discovery in this proceeding has not yet commenced. As a result, it is impossible to determine any contingent liability given that the outcome from the Tennessee Commission investigation is not "reasonably estimable" or "probable" under the requirements of SFAS No. 5 at this time.

JRM 2.04 Please provide a detailed narrative explanation of Talk America's contractual arrangements with America On Line and any anticipated changes to those arrangements. Please provide a calculation of the financial impacts of Talk America's changed relationship with America On Line and/or anticipated changes in that relationship. Include all payments to America On Line or contingent liabilities that may become due, including redemption of stock. Please provide all supporting computations, source documents, assumptions and conclusions used in this calculation.

Response: On January 5, 1999, pursuant to an Investment Agreement between AOL and the Company, AOL purchased 4,121,372 shares of common stock of the Company for \$55.0 million in cash and the surrender of rights to purchase 5,076,016 shares of common stock of the Company pursuant to various warrants held by AOL. AOL agreed to end further vesting under the outstanding performance warrant and retained vested warrants exercisable for 2,721,984 shares of common stock. Under the terms of that Investment Agreement, the Company agreed to reimburse AOL for losses AOL may incur on the sale of any of the 4,121,372 shares of the Company's common stock held by AOL through September 30, 2001. The maximum amount payable to AOL as reimbursement on the sale of AOL's shares was approximately \$54.0 million plus AOL's reasonable expenses incurred in connection with such sale. In addition, AOL also had the right, commencing on July 1, 2001, to require the Company to repurchase warrants held by AOL to purchase 2,721,984 shares of Company's common stock for \$36.3 million, which could have been paid in common stock or cash (provided that some portion of the repurchase price may be payable in a quarterly amortization, two-year promissory note of the Company if the repurchase price exceeded the then current valuation of the warrants being purchased). In addition, upon the occurrence of certain events, including material defaults by the Company under its AOL agreements and a "change of control" of the Company, the Company may have been required to repurchase for cash all of the shares held by AOL for \$78.3 million (\$19 per share), and the warrants for \$36.3 million.

On September 19, 2001, the Company restructured its financial obligations with AOL that arose under the 1999 Investment Agreement and also ended its marketing relationship with AOL effective September 30, 2001 (collectively the "AOL Restructuring"). In connection with the AOL Restructuring, the Company and AOL entered into a Restructuring and Note Agreement ("Restructuring Agreement") pursuant to which the Company issued to AOL a \$54 million, 8% secured convertible note due September 2011 ("2011 Convertible Note") and 3,078,628 additional

shares of the Company's common stock. See Note 2 of the Consolidated Financial Statements included in this Report. The 2011 Convertible Note was issued in exchange for a release of the Company's reimbursement obligations under the Investment Agreement. The 2011 Convertible Note is convertible into shares of the Company's common stock at the rate of \$5.00 per share, may be redeemed by the Company at any time without premium and is subject to mandatory redemption at the option of the holder on the fifth and seventh anniversaries of its issue date. The Company also may elect to pay up to 50% (100% in the case of the first interest payment) of the interest on the 2011 Convertible Note in kind rather than in cash. Pursuant to the Restructuring Agreement, in exchange for and in cancellation of the Company's warrants to purchase 3,721,984 shares of the common stock and the Company's related obligations under the Investment Agreement to repurchase such warrants from AOL, the Company issued 3,078,628 additional shares of its common stock to AOL, after which AOL holds a total of 7,200,000 shares of common stock. The Company agreed to provide certain registration rights to AOL in connection with the shares of common stock issued to it by the Company. The Restructuring Agreement provided that the Investment Agreement, the Security Agreement securing the Company's obligations under the Investment Agreement and the existing Registration Rights Agreement with AOL were terminated in their entirety and the parties were released from any further obligation under these agreements. In addition, AOL, as the holder of the 2011 Convertible Note, entered into an inter-creditor agreement with the lender under the Company's existing secured credit facility.

In addition to the restructuring of the financial obligations discussed above, the Company and AOL agreed, in a further amendment to their marketing agreement dated as of September 19, 2001, to discontinue, effective as of September 30, 2001, their marketing relationship under the marketing agreement. In connection with this discontinuance, the Company paid AOL \$6.0 million under the marketing agreement, payable in two installments - \$2.5 million on September 20, 2001 and the remaining \$3.5 million on October 4, 2001. AOL, in lieu of any other payment for the early discontinuance of the marketing relationship, paid the Company \$20 million by surrender and cancellation of \$20 million principal amount of the 2011 Convertible Note delivered to AOL as discussed above, thereby reducing the outstanding principal amount of the 2011 Convertible Note to \$34 million. The amendment also provided for the payment by the Company of certain expenses related to marketing services until the discontinuance and for the continued servicing and transition of telecommunications customer relationships after the discontinuance of marketing.

With respect to Staff's request for the Company to provide a calculation of the financial impacts of Talk America's changed relationship with America On Line and/or anticipated changes in that relationship, Talk America objects on grounds of attorney-client privilege. The Company's analysis of the change in its relationship with AOL is described in full in its September 20, 2001 Form 10-Q, filed with the SEC on November 14, 2001. The Form 10-Q reflects all material information relating to the Company's change in relationship with AOL, including any contingent liabilities that require disclosure under GAAP. Beyond this, any computations, source documents, assumptions and conclusions used in any calculation of the financial impact of the Company's changed relationship with AOL are covered by attorney-client privilege. Such information also may not be disclosed on a limited basis due to the SEC prohibition of disclosing material, non-public information on a selective basis.

JRM 2.05 Please provide a detailed schedule of the Accounts Payable included in Talk America's consolidated financial statements by age, including categories for accounts due for 30 days or fewer, 30-60 days, 60-90 days and over 90 days. Please include the identity of each vendor in the detailed schedule.

Response Talk America objects to this request as it is irrelevant and not likely to lead to the discovery of admissible evidence. It is irrelevant to this proceeding as to whether any account payable of Talk America is past due, and it also is irrelevant as to whether any account payable is past due for any particular period of time. Moreover, it is irrelevant to this proceeding as to whether payments owed to particular vendors, if any, are overdue. The information sought by this request is not likely to lead to the discovery of admissible evidence because the Company's financial resources are sufficiently and completely identified in the Company's annual and quarterly financial statements filed with the SEC.

Notwithstanding this objection, Talk states that it has a significant amount of financial information that is available to the public and to the Commission for its review. As of the September 30, 2001 SEC quarterly report filed with the SEC on November 14, 2001, the Company had \$24.0 million in cash and cash equivalents.

JRM 2.06 Please provide copies of all correspondence from telecommunications carriers (both local and inter-exchange (long distance) carriers in all states) related to late payments or past due accounts, final notices and disconnect notices to Talk America or its affiliates within the last two years. For purposes of this request correspondence is defined as any document, fax, or e-mail requesting payment and any internally prepared document or e-mail referring to a verbal request for payment.

Response: Talk America objects to this request as it is irrelevant and not likely to lead to the discovery of admissible evidence. It is irrelevant to the Commission whether any account payable relating to any of Talk America's carrier relationships is past due, and it also is irrelevant to the Commission whether any account payable relating to any of Talk America's carrier relationships is past due for any particular period of time. Billing disputes, if any, among the Company and any of its vendors are unrelated to the Commission's evaluation of the Company's financial resources and abilities. The Company and its carriers and vendors have complex interconnection relationships that are managed through multi-layered offsets, dispute procedures, as credits. The Company's management of the interconnection process is not in dispute in this case. Accordingly, the information sought by this request is irrelevant. Moreover, the information sought by this request is not likely to lead to the discovery of admissible evidence because none of the information requested would be admissible in this proceeding.

JA 2.01 Please provide complete records of all the complaints from Illinois consumers against Talk America, Inc. referenced in Attachment 2 of the Applicant's amended application. Please include any Illinois consumer complaint documents received by Talk America, Inc. as well as the Applicant's responses to all Illinois consumer complaints.

Response: Talk America objects to this request on the basis that the request is irrelevant and not likely to lead to the discovery of admissible evidence. Complaints made by individual consumers to Talk America are irrelevant to a consideration as to whether the Company possesses the financial, managerial or technical resources and ability to provide local exchange services in Illinois. Filed complaints, in and of themselves, do not constitute violations of any rule or regulation on the part of the Company and, accordingly, may not be used against the Company as evidence of such. Any complaint relating to the Company's services is hearsay, and is not admissible as evidence of a lack of managerial, technical or financial resources. See *People v. Franklin*, 167 Ill. 2d 1, 24, 656 N.E.2d 750 (1995); *People v. Hendricks*, 137 Ill. 2d 31, 52 (1990); *People v. Triplett*, 108 Ill. 2d 463 474, 485 N.E.2d 9 (1985). Moreover, the Company does not market local services in Illinois, and does not provide local services in Illinois. Consequently, no complaint filed against the Company to date in the State of Illinois could relate to its ability satisfactorily to provide local exchange service in the State of Illinois. For all of these reasons, the information sought by this request is irrelevant to this proceeding and not likely to be admissible.

JA 2.02 For any alleged slamming (unauthorized change of pre-subscribed carrier) or cramming (unauthorized billing for additional services/products) complaints included in the Company's response to JA 2.01 please provide copies of independent third party verifications, letters of agency and notification letters that Talk America, Inc. used to fulfill its responsibilities under Sections 13-902 and 13-903 of the Illinois Public Utilities Act.

Response: Talk America objects to this request on the basis that the request is irrelevant, and not likely to lead to the discovery of admissible evidence. As noted in the previous response to JA 2.01, complaints made by individual consumers to Talk America are irrelevant to a consideration as to whether the Company possesses the financial, managerial or technical resources and ability to provide local exchange services in Illinois. Filed complaints, in and of themselves, do not constitute violations of any rule or regulation on the part of the Company and, accordingly, may not be used against the Company as evidence of such. Any complaint relating to the Company's services is hearsay, and is not admissible as evidence of a lack of managerial, technical or financial resources. See *People v. Franklin*, 167 Ill. 2d 1, 24, 656 N.E.2d 750 (1995); *People v. Hendricks*, 137 Ill. 2d 31, 52 (1990); *People v. Triplett*, 108 Ill. 2d 463 474, 485 N.E.2d 9 (1985).

Notwithstanding this objection, the Company does not object to the production of LOA forms, corporate slamming or cramming policies, or other information identifying the Company's policies and procedures with respect to marketing of its local and interexchange services. This information previously has been provided to Staff in response to Staff's other requests (see, e.g., CJ 1.09, CJ1.10, CJ1.11, CJ1.12, CJ1.13, CJ1.14.)

Provide one copy of your response to:

Judith Marshall
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Mary Stephenson and Margaret Kelly
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60606

TALK AMERICA, INC.)
)
)
 Application to Amend its Certificate) Docket No. 00-0732
 to Operate as a Facilities-Based Carrier)
 of Local and Long Distance Telecommunications)
 Services in the State of Illinois)

State of Illinois)
County of Cook)

1. I am counsel to Talk America, and as a result, have knowledge of the facts herein.

3. On December 27, 2001, Mary Stephenson sent an email to me expressing Staff's dissatisfaction with the Company's responses.

5. At 12:10 p.m. on December 28, 2001 I called Mary Stephenson and left a message on her voicemail requesting that she contact me.

6. At approximately 1:00 p.m. I received a call back from Ms. Stephenson in which she indicated that at that time, Staff had already decided to file a motion to compel.

7. I attempted to contact Ms. Stephenson again at 1:15 p.m. on December 28, 2001, and left another message requesting that she contact me.

8. At approximately 4:00 p.m. on December 28, 2001 I was served with a copy of Staff's Motion to Compel.

Further affiant sayeth not.

Henry T. Kelly

Subscribed and Sworn to before
Me this ___ day of December, 2001

Notary Public

ILLINOIS COMMERCE COMMISSION

DATA REQUEST

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Response: Talk America objects to this request on the basis that the request is irrelevant and not likely to lead to the discovery of admissible evidence. Complaints made by individual consumers to Talk America are irrelevant to a consideration as to whether the Company possesses the financial, managerial or technical resources and ability to provide local exchange services in Illinois. Filed complaints, in and of themselves, do not constitute violations of any rule or regulation on the part of the Company and, accordingly, may not be used against the Company as evidence of such. Any complaint relating to the Company's services is hearsay, and is not admissible as evidence of a lack of managerial, technical or financial resources. See *People v. Franklin*, 167 Ill. 2d 1, 24, 656 N.E.2d 750 (1995); *People v. Hendricks*, 137 Ill. 2d 31, 52 (1990); *People v. Triplett*, 108 Ill. 2d 463 474, 485 N.E.2d 9 (1985). Moreover, the Company does not market local services in Illinois, and does not provide local services in Illinois. Consequently, no complaint filed against the Company to date in the State of Illinois could relate to its ability satisfactorily to provide local exchange service in the State of Illinois. For all of these reasons, the information sought by this request is irrelevant to this proceeding and not likely to be admissible.

JA 2.02 For any alleged slamming (unauthorized change of pre-subscribed carrier) or cramming (unauthorized billing for additional services/products) complaints included in the Company's response to JA 2.01 please provide copies of independent third party verifications, letters of agency and notification letters that Talk America, Inc. used to fulfill its responsibilities under Sections 13-902 and 13-903 of the Illinois Public Utilities Act.

Response: Talk America objects to this request on the basis that the request is irrelevant, and not likely to lead to the discovery of admissible evidence. As noted in the previous response to JA 2.01, complaints made by individual consumers to Talk America are irrelevant to a consideration as to whether the Company possesses the financial, managerial or technical resources and ability to provide local exchange services in Illinois. Filed complaints, in and of themselves, do not constitute violations of any rule or regulation on the part of the Company and, accordingly, may not be used against the Company as evidence of such. Any complaint relating to the Company's services is hearsay, and is not admissible as evidence of a lack of managerial, technical or financial resources. See *People v. Franklin*, 167 Ill. 2d 1, 24, 656 N.E.2d 750 (1995); *People v. Hendricks*, 137 Ill. 2d 31, 52 (1990); *People v. Triplett*, 108 Ill. 2d 463 474, 485 N.E.2d 9 (1985).

Notwithstanding this objection, the Company does not object to the production of LOA forms, corporate slamming or cramming policies, or other information identifying the Company's policies and procedures with respect to marketing of its local and interexchange services. This information previously has been provided to Staff in response to Staff's other requests (see, e.g., CJ 1.09, CJ1.10, CJ1.11, CJ1.12, CJ1.13, CJ1.14.)

Provide one copy of your response to:

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Illinois Commerce Commission
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Springfield, Illinois 62701

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Illinois Commerce Commission
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